

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1371 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RAMANBHAI VITTHALBHAI PATEL

Versus

KAUSHIKA JAYKRISHNA JOSHI

Appearance:

MR DD VYAS for Petitioner

MR HM PARIKH for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 27/04/2000

ORAL JUDGEMENT

#. The petitioner is the original tenant against whom
the opponent had filed the suit being Regular Civil Suit

No.88/79 in the court of the learned Civil Judge (Senior Division), Navsari. It is the say of the plaintiff in the said suit that the defendant - tenant was in arrears of rent for more than six months on the date of the demand notice. He was occupying the suit premises as the tenant at the rate of Rs.100/- per month as rent. The suit property is situated in Navsari Town. The defendant had not paid any rent from 1.1.1974, therefore, the demand notice was served upon him. However, the defendant refused to accept the same, but had sent Rs.600/- by money order towards the arrears of rent. The aforesaid rent was accepted by the plaintiff without prejudice to his rights and contentions. After deducting the time barred rent, the plaintiff filed the suit to get the decree for possession as well as the arrears of rent of Rs.3600/-.

#. The defendant appeared in the suit and filed his written statement at Exh.11. He denied the fact about receiving the suit notice. It is the say of the defendant that, even though, he was paying the rent, the plaintiff was not issuing the receipts about such payment. It was also the say of the defendant that, he sent money order of Rs.600/- which covered the rent upto 28.2.1979. It was, therefore, contended that the defendant was not in arrears of rent.

#. The learned trial court framed various issues at Exh.20 from the pleadings of the parties and after recording the evidence and hearing the arguments of both the side, decreed the suit on the ground of arrears of rent. The trial court also passed the decree for arrears of rent amounting to Rs.3600/-.

#. The aforesaid decree of the trial court was challenged by the defendant by way of Regular Civil Appeal No.1/82. The learned District Judge, Valsad by his order dated 16.9.1983 dismissed the said appeal, and the decree for possession was confirmed by the appellate Judge accordingly.

#. The defendant has filed this civil revision application against the aforesaid order of the appellate court.

#. At the time of hearing of this civil revision application, it was argued by Mr.Vyas, learned advocate for the petitioner that even though the tenant was paying the rent to the landlord, he was not issuing any receipt and that, under section 26 of the Bombay Rent Act, the landlord was bound to issue the receipt after receiving

the rent. Now, so far as the question about the payment of rent by the defendant to the plaintiff is concerned, the learned appellate Judge has found that, there is a word against word. According to the plaintiff, no rent was paid, while according to the defendant, he used to pay the rent, but no receipts were given by the landlord. If, documentary evidence is not available on record, then naturally, the court has to consider oral evidence of the parties. The case pleaded by the tenant in his written statement at Exh.11 is that, he used to approach the plaintiff every month for the purpose of payment of the rent, but she was not accepting the same on the ground that, as and when the amount will accumulate, she will accept the same. The tenant has not stated that, in fact, he has paid the rent to the plaintiff or to the husband of the plaintiff. The defendant has not stated that, he has paid accumulated rent to the plaintiff. The learned appellate Judge has, therefore, considered oral evidence of the plaintiff as well as of the defendant and accordingly found that the say of the plaintiff was more trustworthy than that of the defendant. Demand notice was served to the defendant, however, he refused to accept the same. Notice is at Exh.35 and the same is dated 14.2.1979. It is at that stage the defendant had sent Rs.600/- by money order. After accepting the money order, the plaintiff sent letter to the defendant in which it was mentioned that the defendant was not right in mentioning the fact while sending the money order that he is sending the entire arrears of rent. The defendant, thereafter, did not send any further money order, nor even replied to the letter of the plaintiff. The learned appellate Judge has considered the conduct of the defendant and on appreciation of the evidence as a whole, it was found that the defendant had not paid the entire rent within one month from the receipt of the suit notice.

#. In that view of the matter, I do not find any substance in the arguments of Mr.Vyas that the tenant had paid the entire rent, but since no receipts were given by the plaintiff, the say of the defendant should be accepted that such rent was paid by him. In that view of the matter, if the rent is payable by month, and if, no dispute of the standard rent is taken within one month of the receipt of the suit notice, the decree under section 12(3)(a) of the Bombay Rent Act is required to be passed as laid down by the Honourable Supreme Court in the case reported in 31(1) GLR 209. In that view of the matter, the courts below were justified in decreeing the suit of the plaintiff for possession on the ground of arrears of rent.

#. I, therefore, do not find any substance in this civil revision application. Civil Revision Application is accordingly dismissed. Rule discharged. Interim relief stands vacated. No order as to costs.

#. At this stage, Mr.Vyas, learned advocate for the petitioner requested for granting about two years time to the tenant for vacating the suit premises on the ground that, it will be very difficult for the tenant to obtain another premises within a short period. Mr.Parikh for the otherside submitted that, the opponent has no objection if the reasonable time is granted to the petitioner to vacate the suit premises. In the facts and circumstances of the case, the petitioner - tenant is granted time upto 30.6.2001 to vacate the suit premises. Accordingly, the decree for possession shall not be executed till 30.6.2001. The aforesaid time is granted on condition that the petitioner shall file usual undertaking before this court within eight weeks from today. The petitioner should clearly mentioned in the said undertaking that he is in exclusive possession of the suit premises and that without obstructing in any manner, he will hand over the vacant and peaceful possession to the opponent on or before the aforesaid date. The petitioner should also pay mesne profits regularly till he vacates the suit premises. If, the aforesaid undertaking is not filed on or before the aforesaid date or subsequently, if there is any breach of the said undertaking, it will be open for the opponent to execute the decree for possession forthwith.

(P.B.Majmudar,J.)

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